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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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JUN 29 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Section 19 )  
of the Cable Television )  
Consumer Protection and )  
Competition Act of 1992 )

Annual Assessment of the )  
Status of Competition in the )  
Market for the Delivery of )  
Video Programming )

CS Docket No. 94-48

COMMENTS OF THE SATELLITE BROADCASTING  
AND COMMUNICATIONS ASSOCIATION OF AMERICA

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**COMMENTS OF THE SATELLITE BROADCASTING  
AND COMMUNICATIONS ASSOCIATION OF AMERICA**

**INTRODUCTION**

The Satellite Broadcasting and Communications Association of America ("SBCA") is pleased to submit to the Commission its comments in the above-referenced Notice of Inquiry. The Commission has issued a broad and far-reaching NOI. SBCA will attempt to respond by describing for the Commission certain unique characteristics of Direct-To-Home video delivery which affect how DTH competes in the local market place. SBCA will also recommend to the Commission some useful tools to assist in making determinations regarding effective competition in cable operator service areas. Finally, we discuss certain barriers to DTH competition, some of which the Commission is already aware but which have become more acute since the Commission's cable study in 1990.

The SBCA is the national trade association which represents every element involved in the delivery of television programming to consumer households utilizing DTH reception systems. These entities constitute all the vertical segments of the industry which participate in the DTH distribution chain. They include the manufacturers and operators of satellites; the pioneering technology companies which develop and market encryption and compression techniques and equipment; the program services which are available over satellite and the packagers who market them to consumers; the manufacturers of satellite antennas and receiving equipment; and the independent retailers who market programming and reception systems to consumers at the point of sale.

#### **Satellite Meets The 50% Penetration Criterion**

We would also note here that a major characteristic of satellite transmissions is the ubiquitousness of the satellite footprint. That is to say, whether or not a household actually owns a DTH system, most households in North America are "passed" by satellite signals because of a satellite footprint's national coverage<sup>1</sup>. They have only to be brought down through the purchase of the appropriate receiving equipment, together with a decoder (integrated receiver-decoder or "IRD" in industry parlance) if households wants to watch subscription programming. SBCA believes that, because of the scope of the footprint,

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<sup>1</sup> Some households may not be able to receive satellite signals because of poor line-of-sight characteristics or other technical considerations. But for the FCC's purposes of measuring effective competition, satellite penetration is well over the 50% threshold.

satellite provides the most cost-effective means of point-to-multipoint communications -- an important component of the rapidly evolving National Information Infrastructure.

#### **TRADITIONAL C-BAND SATELLITE RECEPTION**

The NOI has described well the major types of DTH system technologies which currently operate in the market place. We include additional detail. They are first the C-Band which is the longest standing of the DTH services operating today. It was initially developed as a backyard project in 1976 by SBCA's current chairman, Taylor Howard, who constructed his own system in order to better receive satellite television programming in the California foothills. The technology became commercialized in 1980 which is the year SBCA utilizes to mark the beginning of the industry as a competitor.

The C-Band is comprised of services transmitted from satellites operating in the Fixed Satellite Service and received by consumers with dish antennas of 7-10 feet in diameter. At present, C-Band offers 103 subscription (scrambled) channels, approximately 150 channels in-the-clear, and 75 audio services available at no charge.

As the DTH industry began its ascent in 1980, fueled by the availability of a large number of program services then transmitting in-the-clear, statistics were difficult to come by. The formation of SBCA in January, 1987, with the major industry participants finally under one roof, gave the Association the impetus to obtain better estimates of systems shipped on a

monthly basis. The data collection techniques at that time were informal, but the information acquired from firms willing to share their shipment results enabled the Association to assemble reasonable estimates as to shipments of DTH systems.

Then, in 1993, SBCA created its own research and data base arm, SkyTRENDS, which, by contract with a third party, monitors system shipments and subscriptions (which we will discuss further in these comments), utilizing proprietary data from SBCA member companies. As a result, SkyTRENDS now offers the entire DTH industry a highly accurate record of production data, economic trends, demographic and other analyses which enable DTH companies to gauge the industry's progress as a video competitor.<sup>2</sup>

The tenacity of C-Band services in the face of a history of both competitive and technical adversity is being well rewarded today. SBCA estimates that there have been over 4 million C-Band systems shipped by U.S. companies since 1980.

The most recent SkyTRENDS reports show that 55,000 C-Band systems were shipped in April, 1994 -- the highest monthly shipment level since 1986 -- and 61,000 systems in May, 1994, yet another record. We also believe that in excess of 1 million systems are located in other countries in the Western Hemisphere -- namely Mexico, Canada and the Caribbean,

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<sup>2</sup> Appendix A contains all the SkyREPORT newsletters since the inception of SkyTRENDS.

however it is extremely difficult to track them at the present time.<sup>3</sup>

The boom in C-Band system sales which we are witnessing is due, we believe, to increased consumer awareness of the high quality of satellite signal display and the wide choice of programming available to consumers. At the same time, the trends in system pricing have become progressively lower placing DTH ownership within the reach of many more consumers. Following Taylor Howard's creation of the first real home satellite receiving system, the true commercialization of the industry began in 1980. Then, systems became available in specialty stores at a price of about \$25,000 (Nieman-Marcus offered a satellite \$35,000 system for sale in Christmas, 1979). SBCA estimates that at the time, about 5,000 systems were in existence.

But it did not take long for the public to accept the versatility and choice satellite viewing offered, and in 1985, the year before scrambling became universally adopted by major program services, the industry shipped 750,000 systems. Today, consumers pay an average of \$2,500 for a complete system, more if other amenities are added to enhance viewing such as surround sound, home theater, etc. -- all popular additions for television "aficionado's."

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<sup>3</sup> Because a satellite "footprint" covers a large portion of the Western Hemisphere, a substantial "gray market" in program subscriptions has arisen outside the U.S. Foreign nationals, using U.S. billing addresses, are able to receive programming using IRD's, despite the lack of recognized program marketing entities in their countries and even contrary to foreign government restrictions on the reception of U.S. programming.



In addition to the SkyTRENDS data, in 1993 the SBCA Satellite Marketing Council commissioned Bruskin/Goldring, a leading consumer research firm, to survey over 1,000 satellite system owners regarding their satisfaction levels in satellite system ownership. The study, conducted in November, 1993, revealed, among other things, that 65% of the DTH owners surveyed had cable available to them and that 37% of those households subscribed to both cable and satellite. The study also showed that 39% of the DTH households were already passed by cable at the time they acquired their systems, with the remainder being passed after they acquired DTH.<sup>4</sup> These are intriguing statistics. They confirm that many households select DTH because of the vast number of program choices; the superior video and audio quality of the satellite signal; and because they may not be pleased with the service offered by their local cable operator. Those who subscribed to both seem to prefer receiving local programming by cable and watching DTH for other services. We should note that all DTH systems have internal, electronic A/B switches and, that a great majority are installed with either a UHF/VHF antenna hook-up or cable. As new DTH services come on line, we anticipate that these penetration trends in the video market place will continue.

As the Commission well knows, the emergence of DTH as a viable competitor was not without setbacks along the way. The advent of signal scrambling in 1986, for example, brought with it an onslaught of satellite signal theft undertaken by an efficient and highly

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<sup>4</sup> See Appendix B, 1993 SBCA Home Satellite Dish Owner Study, prepared by Bruskin/Goldring for the Satellite Marketing Council of the SBCA.

skilled technical underground. In 1991, at the time the compromised decryption technology began to be replaced in the field by the next generation of decoding system, SBCA estimated that of the approximately 3.5 million reception systems in the U.S., close to 1.2 million consumers had modified or "chipped" their systems so as to be able to receive scrambled programming without having to pay a fee. The market-driven response in changing out the old technology has been highly salutary. The new decryption system has held now for three years, and many of the consumers who previously owned "chipped" units have now converted to being legitimate subscribers. Having emerged from this era of "electronic warfare," the industry is now back on track at the highest rate of monthly new system shipments in eight years.

#### **How Consumers Subscribe to C-Band Programming**

The commencement of scrambling in 1986 also brought with it the beginnings of an elaborate system of marketing program services to consumers. These efforts were spurred by amendments to Section 705 of the Communications Act of 1934 which were embodied in the Cable Communications Policy Act of 1984 (Section 633, Public Law 98-549). There, Congress recognized satellite signal encryption and the marketing requisite to distribute scrambled program services to satellite television consumers.<sup>5</sup> It is important that the Commission understand how C-Band programming is marketed because the various points

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<sup>5</sup>The anti-signal theft provisions of PL 98-549 were further strengthened by the 1988 Satellite Home Viewers Act and were instrumental in helping to prosecute and eventually eliminate satellite signal piracy.

of sale for program subscription services have an important bearing on how effective competition is measured at the local level.

The main characteristic of C-Band program sales is their availability from a number of different sources. In recognizing consumer program needs, the industry program sales structure has evolved into a flexible, user-friendly system. Program acquisition by consumers is decentralized as opposed to the more centralized sales structure of both the medium-powered and high-powered Ku-Band DTH systems. The Bruskin/Goldring study showed that the majority of subscribers purchased their programming from one of about 30 competing national "program packagers." These satellite marketing organizations have agreements with the national program services to include in their offerings the signal of each service.<sup>6</sup> A C-Band DTH consumer could also purchase subscription television programming through the satellite dealer from whom the DTH receiving system was purchased, although the survey indicated that only 17% of subscribers purchased their programming that way.

DTH satellite consumers not only can obtain subscription programming from more than one source, they do so outside the service area of a local cable operator. For example, we have already indicated that consumers may subscribe to programming directly from a third party

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<sup>6</sup> Appendix C contains sample "program packages" from several national satellite marketing entities and represent typical offerings available to consumers.

program packager located in another state. These companies, often equipment distributors as well, maintain 800-number marketing staffs ("back room"), and consumers are able to subscribe to programming through them, often within 5 to 10 minutes of the telephone call. In addition, some major program services also have marketing arms which offer packages to consumers along similar lines. Finally, as we have previously indicated, retail DTH system dealers also act as sales agents for packagers at the point of sale.

The complex administrative system needed to authorize a subscriber to receive a scrambled program service is carried out by the DBS Center, located in San Diego, CA. This computer facility is operated under contract with the program services which are using the VideoCipher scrambling system to serve the DTH market place.

The DBS Center allows for all consumer programming purchases made at each programming packager's telemarketing office to pass through one common data collection and storage point which actually does the authorizing (and deauthorizing) of each of the approximately two million individual consumer decoder units in the field.

It is also important to note that as a result of "universal addressability," the DTH market is poised to offer advanced telecommunications capabilities envisioned by the NII. The uniquely addressable decoder enables a variety of information transmissions via the video data stream -- information which can be simultaneously accessed by every DTH consumer

with a decoder. SBCA believes that the market place will move to develop even more uses for such capability in the near future.

A cursory examination of the random program offerings in Appendix C reveals that the widest selection of program packages are available to consumers within a broad range of rates. A la carte selection is also available.

In summary, it is clear that DTH satellite reception offers consumers an important, quality choice in television viewing. Program packaging formats and the ease with which a consumer can subscribe to programming make satellite highly user friendly. Coupled with the near-CD video picture quality and the availability of digital audio, DTH is a premier alternative.

#### **Issue Surrounding The Determination of Effective Competition From C-Band Systems In Cable Operator Service Areas**

Due to the unique demographic and subscriber characteristics of the C-Band industry, cable operators may have difficulty in obtaining accurate data regarding video competition in their local service areas. Specifically they bear the burden of acquiring "reach and penetration" data of C-Band systems in their local service areas in accordance with the FCC's rules regarding rate regulation and the determination of effective competition. But as we have alluded to, certain features surrounding the decentralized and highly competitive aspects of

C-Band program reception complicate the ability of a cable operator to gauge whether or not "effective competition" is present.

**1. What type of DTH viewing should be counted toward "reach and penetration" for the purpose of determining effective competition?**

The operative definition of "effective competition" as defined in the 1992 Cable Act and as it relates to DTH requires that a cable franchise area is:

"(i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and

"(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area;"

Because DTH already meets the 50% threshold service test, there is also no question that DTH "offers comparable video programming" if those households in a service area decide to purchase a system.

Test (ii) however calls for additional clarification because while the statute refers to "households subscribing," many DTH viewers elect not to purchase subscription programming and are content to watch the approximately 150 channels which are available in-the-clear. The question arises whether the latter households should also be counted as receiving "comparable video programming" in view of the fact that they do not formally "subscribe" to any program services. According to the FCC's rule in MM Docket 92-266,

in-the-clear systems should be included in the measurements. The rule states that, "to offer 'comparable' programming, multichannel video programming distributors must provide at least twelve channels of programming, including at least one channel of nonbroadcast service programming." (para. 38) Many satellite dealers also provide off-air TV antennas thus aiding in the fulfillment of this provision. In any event, we raise here a few issues which are implicated in the FCC's rule.

Unfortunately, because it is only possible to track subscribing households by zip code through the program authorization mechanism described earlier, it is difficult if not impossible to identify in-the-clear-only system households. With a potential in-the-clear-only DTH population of close to 2 million, there is a significant number of households which may not have been included in the initial determinations of effective competition. The Bruskin/Goldring consumer study cited earlier determined that in November, 1993, 42% of DTH system owners subscribed to programming. We believe that another than five hundred thousand more units may have been added to the base.<sup>7</sup> Therefore, the 42% figure has increased dramatically.

**2. Subscriber counts are not totally accurate because of decentralized subscription sales.**

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<sup>7</sup> These new systems would include consumers converting from "chipped" to subscribing units; subscribers to cable also choosing DTH; and continued purchases of systems by consumers watching in-the-clear only.

We have already discussed the various sales entities to which a consumer can turn to subscribe to satellite programming. However, at the time a cable operator contacts the satellite dealers within a local service area to determine the number of subscribers to be counted toward the 15% benchmark, neither he nor the retailers contacted would have knowledge of subscriptions sold by out-of-service-area program packagers to households inside the service area. By the same token, it is likely that some DTH households within the service area also purchased their receiving systems from other dealers in other areas or dealers who are no longer in business. We estimate that, in 1985, there were approximately 18,000 dealers from whom to buy satellite receiving systems, while today, an estimated 6,000 dealers serve the market. In addition, some households subscribe from more than one satellite packager and so may be counted twice by a cable operator trying to obtain information from multiple sources.

The upshot of these and other versions of such scenarios is the potential under-reporting (or over-reporting) of DTH subscriber households, as well as little information on in-the-clear-only home installations. Consequently, it may not be practical for a local cable operator to amass the correct data for purposes of the effective competition test. As we will note further on, the centralized nature of program subscription sales by the medium-powered and high-powered Ku-Band services will not entail this difficulty because virtually all program offerings by these services are almost all by subscription and are thus subject to centralized tracking and record keeping.



**SBCA's SkyTRENDS Market Data Base Program Can Assist The Commission In Determining More Accurately Competition From C-Band Systems**

In 1994, the SBCA inaugurated its SkyTRENDS research and data base activity designed to compile and publish monthly industry statistics on the DTH satellite industry, including shipments of receiving equipment and antennas and monthly subscriptions for the industry as a whole. The latter are made available on a proprietary basis to the SkyTRENDS project by the individual programming services in the industry, although the reporting is generic by agreement.

In our earlier discussion of the mechanics of subscribing to program packages, we noted the role of the DBS Center in maintaining up-to-date records of U.S. subscribers by zip code. The SkyTRENDS program is prepared to make available to the Commission or to individual cable operators a generic listing of subscriber locations by zip code in order to facilitate the identification of satellite subscriber penetration within a local cable service area.<sup>8</sup>

What still remains is an attempt to incorporate into service area computations an approximate number of in-the-clear-only households so as to extrapolate a realistic penetration level of DTH households. It is not unreasonable to assume that most present

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<sup>8</sup> The Commission has already indicated its desire to initiate a rulemaking "proposing that competitors be required to file with the Commission annual registration statements" concerning "reach and penetration." SBCA offers the availability of subscriber locations by zip code to help fulfill its reporting goal. (MM Docket 92-266, Footnote 145)

and future buyers of DTH systems could be subscribing households<sup>9</sup>, i.e. it will be possible to track subscribers by zip code from central authorization centers and thereby make that data available to the Commission for the purpose of measuring competition.

#### **MEDIUM-POWER KU-BAND SERVICE**

Primestar Partners, a medium-power Ku-Band video service provider, has been in operation since 1990. Its program offerings add to the already attractive mix of services available by satellite to consumers. Primestar adds an exciting dimension to DTH technology, in keeping with the industry's goal of offering additional consumer flexibility and choice as the service seeks to serve new markets.

Primestar presently serves 70,000 subscribers. Through a vigorous campaign to attract a larger number of rural households, many of which do not receive video service of any kind, the company is upgrading its receiving systems to digital technology and planning to offer subscribers 70 channels by this Fall utilizing compression. Primestar's goal is to have 225,000 subscribers by the end of 1994. Because it is a subscription service, subscriber counts will be available by zip code to SBCA's SkyTRENDS project in 1995.

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<sup>9</sup> All medium-powered and high-powered KU-Band offerings will be by subscription only thus automatically requiring an authorization process to activate their decoders.

### **HIGH-POWER KU-BAND SERVICE**

This NOI is fortuitous for, among other things, it coincides with the commencement of the DIRECTV-Hubbard high-power Ku-Band service which opened its doors for business on June 17, 1994, in Jackson, MS. The initial results thus far appear to have been highly successful, and the service projects 600,000 subscribers by the end of this year. In addition to rural markets, SBCA believes that this service will also find its way to suburban and urban markets, increasing the competitive environment for viewing households.

A wide range of programming is also available on DIRECTV-Hubbard, including a substantial pay-per-view capability. Both medium-power and high-power Ku-Band services will offer program packages at reasonable rates. The April, 1994, issue of SkyREPORT (see Appendix A) contains a descriptive break-out of both program services and pricing in the Ku-Band.

### **The Opportunities of Ku-Band Services**

Both Ku-Band services also face the public service obligations mandated by the 1992 Cable Act. SBCA and the respective services, in the spirit of providing the public service channel set-asides called for in the Act, have filed detailed comments with the Commission concerning the problems and recommended approaches to achieving channel set-asides in the technological environment of digital compression. We also discussed the cost issues inherent in enabling the required channel access, in view of the large risk and investment

in Ku-Band service which we have touched on above. The public service obligation, coupled with the vast program offerings and high quality video and audio we anticipate Ku-Band services to provide, will make them highly competitive in the video market place.

Any discussion of Ku-Band services should also include the size of the investment in resources and funds which have been ploughed into making them a reality. Constructing and launching a satellite is no small proposition, and companies risk loss of their investment in the event the satellite launch is a failure. In addition, marketing program services (and other software products) entails the training and maintenance of a substantial distribution network, negotiating programming agreements, and the administrative burden of operating a computer center to authorize, track and de-authorize (if need be) subscribers and their location by zip code.

As we previously stated, the Bruskin/Goldring study indicated that 39% of C-Band sales, were made by households already passed by cable. We would anticipate that the smaller antenna size and lower system costs of Ku-Band will result in greater penetration in suburban and urban households, therefore creating increasing competition to the cable industry.

#### **ZONING ORDINANCES AND HOME OWNERS ASSOCIATION RESTRICTIONS CONTINUE TO HAMPER SATELLITE PENETRATION AT THE LOCAL LEVEL**

A key obstacle to DTH penetration at the local remains which continues to plague the

satellite industry today, irrespective of the technology utilized by the consumer. It entails zoning abuses by local municipalities which discriminate against satellite antennas, and home owner associations which promulgate discriminatory covenants and conditions against DTH systems.

In spite of the Commission's 1986 Pre-emption Order concerning discrimination against DTH systems by local zoning ordinances, consumers purchasing systems continue to encounter prejudicial treatment at the hands of local zoning boards. In 1991, the SBCA petitioned the Commission for a declaratory ruling to reclarify the 1986 Order with a view toward establishing firmer guidance to local governments of the rights of would-be satellite system owners.

Since then, two important U.S. court cases have made Commission action on this front even more urgent. In the first, Town of Deerfield v. FCC (the "Carino" case), the Commission's procedural approach as a "court of last resort" in zoning cases was overturned by a U.S. Court of Appeals (see NOI footnote 46). However the substance of the 1986 Order was not challenged<sup>10</sup>, and the Commission's rules remain intact regarding zoning discrimination against satellite antennas.

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<sup>10</sup> The FCC had pre-empted the Town of Deerfield zoning ordinance, but the pre-emption was overturned because of the provision of collateral estoppel regarding the procedure in raising a zoning complaint to the Commission level.

A more recent case, Abbott v. City of Cape Canaveral,<sup>11</sup> could have a more insidious effect because a U.S. District Court has applied a unique interpretation of "reasonable reception" within the meaning of the Order. In short, the court has elected to determine what signals Mr. Abbott can and cannot watch. The satellite owner has taken the decision to appeal, and SBCA is supporting it by providing expert counsel for the plaintiff. It is this type of issue which the FCC must address to avert further erosion of its 1986 order.

In early 1993, the Commission issued a NOI on the zoning pre-emption order, in response to the SBCA's 1991 petition, a petition filed by Hughes Network Systems, and the Deerfield case. We are awaiting the Commission's next step in resolving this issue which has important competitive ramifications for the satellite industry.

Unfortunately, it is not only zoning boards which are having an effect on satellite system sales at the local level. Homeowner associations, through their covenants and other conditions and restrictions, are also barring DTH use. The situation becomes progressively thornier as more and more new residential construction adopts the HOA concept of governance (SBCA estimates that 80% of new home construction comes under HOA purview), and HOA boards and architectural committees exercise their power often without "due process" being afforded to DTH owners.

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<sup>11</sup> United States District Court Middle District of Florida, Orlando Division, Case No. 92-1113-CIV-ORL-18.

In its 1986 Pre-emption Order, the Commission specifically averted consideration of the HOA issue.<sup>12</sup> To deal with it however, the SBCA has attempted to initiate a dialogue with national organizations such as the Community Associations Institute and has encouraged member retailers to work with HOA boards in their sales areas to create a more favorable climate for DTH. But to the best of our knowledge, California is the only state which protects DTH system owners from unreasonable HOA covenants<sup>13</sup> However a larger and more forceful impact is needed, and the Commission may be the only agency which can provide it. The SBCA would like to work with the Commission in attempting to find a reasonable approach to dealing with the local covenant issue, and we hope that in any future zoning proceedings this issue would be submitted for consideration.

## CONCLUSION

An analysis of the data we have presented in these comments, together with the information in the Appendices (which we urge the Commission to review), indicates an increasingly competitive trend on the part of the DTH satellite industry. It is poised to advance to the next level of competition for television viewers, and we foresee greater urban and suburban penetration by DTH than ever before, particularly with the introduction of smaller antennas.

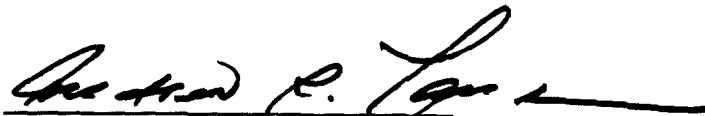
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<sup>12</sup> The Commission stated, "This issue was not raised in our Notice and raises some issues not presented in a consideration of local governmental action." (Footnote 62)

<sup>13</sup> See **Portola Hills Community Association v. James**, 5 Cal. Rptr. 2d 580 (Cal. App 1992).

We also believe that the C-Band services will show a continued rise in sales and penetration while at the same time the Ku-Band services will garner a substantial number of subscribers as both Primestar and DIRECTV/Hubbard ramp up their marketing programs. Indeed it will be an exciting time for consumers who will have even more programming choices and high quality service than ever before.

In any event, the SBCA offers the cooperation of the industry, in connection with the market data already assembled through the SkyTRENDS program, to facilitate both the Commission's and cable operators' job of determining criteria for effective competition in whatever the geographic/service area the Commission elects to utilize.

A handwritten signature in black ink, appearing to read "Andrew R. Paul", written over a horizontal line.

Andrew R. Paul  
Senior Vice President



